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19 UNITED STATES BANKRUPTCY COURT  
20 CENTRAL DISTRICT OF CALIFORNIA  
21 SAN FRANCISCO DIVISION

22 In re  
23 HOWREY LLP,  
24 Debtor.

Case No. 11-31376

Chapter 11

**THE IRVINE COMPANY LLC'S  
RESPONSE REGARDING OBJECTION TO  
CLAIM NO. 618-1 FILED BY THE  
OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS [DOCKET 2299]**

Date: July 30, 2015  
Time: 1:30 p.m.  
Place: Courtroom 22  
235 Pine Street  
San Francisco, California

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Creditor The Irvine Company LLC ("TIC") hereby responds to the Objection to Claim No. 618-1 (of The Irvine Company, LLC) by Official Committee of Unsecured Creditors ("Objection"), as follows:

**I. INTRODUCTION**

In 2006, Debtor Howrey LLP (the "Debtor") entered into a lease of approximately 34,400 (later amended to 45,470) rentable square feet of office space in Irvine, California with TIC. The Official Committee of Unsecured Creditors (the "Committee") concedes that the Debtor entered into this lease in the ordinary course of the Debtor's business. Objection, pg. 18, ¶ 46. Following the rejection of its office lease by the Debtor after an order for relief was entered in the Debtor's involuntary bankruptcy case, TIC filed certain claims against the Debtor's estate. TIC's claims include a claim in the amount of \$321,604.41 for the rent and other charges that accrued under TIC's lease during the period beginning with the involuntary bankruptcy filing and ending on the entry of an order for relief by this Court (the "TIC GAP Claim").<sup>1</sup> The TIC GAP Claim is entitled to priority under sections 502(f) and 507(a)(3) of the Bankruptcy Code.

Without citing to any authority addressing obligations to pay rent under nonresidential real property leases that accrue during the gap period, the Committee has taken the position that the TIC Gap Claim is not entitled to priority under sections 502(f) and 507(a)(3) because: (i) TIC, as a landlord with a prepetition lease, is statutorily ineligible for priority under section 502(f) because rent due under a prepetition lease is allegedly deemed to "arise" upon lease execution; and (ii) the rent that accrued during the gap period under TIC's lease allegedly did not "arise" in the ordinary course of the Debtor's business (even though the Committee readily concedes that TIC's lease was executed in the ordinary course of the Debtor's business). TIC submits that the Committee's Objection should be overruled for at least the following reasons:

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<sup>1</sup> In its Objection, the Committee has not challenged the amount of the TIC Gap Claim. Rather, the Committee has merely challenged the characterization of the TIC Gap Claim as a priority claim under section 502(f) and 507(a)(3) of the Bankruptcy Code. TIC reserves the right to supplement this response to the extent that the Committee, in any way, seeks to challenge the amount of the TIC Gap Claim, rather than just the characterization of such claim as a priority claim.

1        First, contrary to the Committee's argument, case law firmly establishes that the monthly  
2 rent due under a nonresidential real property lease "arises" from month to month when payment is  
3 due and payable under the lease; not when the underlying lease is first executed. As the Ninth  
4 Circuit BAP long ago recognized: "Current rent payments were held to rest upon current  
5 consideration, i.e., a grant of possession for the rent period, and therefore did not constitute  
6 preferences." *Upstairs Gallery v. Macklowe W. Dev. Co., L.P. (In re Upstairs Gallery)*, 167 B.R.  
7 915, 941 (B.A.P. 9th Cir. 1994). Thus, the Committee's argument that the TIC Gap Claim arose  
8 for purposes of sections 502(f) and 507(a)(3) upon lease execution is without merit. Indeed, if this  
9 Court were to construe section 502(f) as the Committee suggests, *no nonresidential real property*  
10 *landlord could ever have an allowed priority claim under section 502(f) and 507(a)(3) of the*  
11 *Code in any involuntary bankruptcy case.*

12        Second, the Committee's contention that the obligation to pay rent under TIC's lease did  
13 not arise in the ordinary course of business is also incorrect. The Committee readily concedes – as  
14 it must – that TIC's lease was executed in the ordinary course. Objection, pg. 18, ¶ 46. Because  
15 the lease was executed in the ordinary course of business, the obligations that arose during the gap  
16 period also constitute ordinary course obligations.

17        Accordingly, this Court should overrule the Committee's Objection in its entirety.

## 18        **II. BACKGROUND**

### 19        **A. TIC's Lease**

20        TIC, as landlord, and the Debtor, as tenant, are parties to that certain Office Space Lease  
21 dated as of September 18, 2006, as amended by that certain First Amendment to Lease dated  
22 April 25, 2007 (collectively, the "Lease"). In accordance with the Lease, TIC leased to the Debtor  
23 certain nonresidential real property comprised of approximately 34,400 (later amended to 45,470)  
24 of rentable square feet of space located at 4 Park Plaza, Suites 1700 and 1800, Irvine, California  
25 (the "Premises"). A true and correct copy of the Lease is attached as Exhibit "1" to TIC's Proof of  
26 Claim No. 618 (the "TIC Claim").<sup>2</sup>

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27  
28        <sup>2</sup> For the Court's convenience, attached hereto as Exhibit "A" is a true and correct copy of the  
TIC Claim.

1           **B.     The Involuntary Bankruptcy Filing and Entry of an Order for Relief**

2           On April 11, 2011 (the "Petition Date"), certain of the Debtor's creditors filed an  
3 involuntary petition for relief under chapter 7 of the Bankruptcy Code against the Debtor. On  
4 June 6, 2011, this Court entered its Order for Relief and Converting Case to One Under  
5 Chapter 11 [Docket No. 59] (the "Order for Relief").

6           **C.     The Debtor's Rejection of the Lease**

7           As part of its regular business operations, the Debtor was a party to numerous executory  
8 contracts and unexpired leases. Indeed, in its Schedule G, the Debtor scheduled that it was a party  
9 to approximately seventeen (17) office lease agreements, six (6) sublease agreements, and two (2)  
10 storage space agreements as of the Petition Date. *See* Schedule G [Docket No. 132, pgs. 136-163].

11          With respect to the Lease, the Committee states in the Objection:

12                   On information and belief, the Debtor surrendered the Premises on  
13                   or about the Petition Date. Objection, pg. 3, ¶ 7.

14          This unsupported statement is not accurate. Following the involuntary bankruptcy filing, the  
15 Debtor maintained possession of the Premises. Indeed, as of the date the Order for Relief was  
16 entered, the Premises were full of the Debtor's furniture, trade fixture, and equipment. *See* Motion  
17 of the Debtor for Order Authorizing the Sale of All of the Debtor's Personal Property Located at  
18 4 Park Plaza, Irvine, California 92614 Free and Clear of Liens [Docket No. 218] (the "Sale  
19 Motion"), pg. 3, ¶ 5 ("The Debtor currently has furniture, trade fixtures and equipment  
20 (collectively, the "Personal Property") located at the Premises.").

21          On or about June 6, 2011, the Debtor filed its Motion of the Debtor for Order  
22 (I) Authorizing the Rejection of Certain Unexpired, Leases and Subleases Effective as of the Date  
23 of the Motion and (II) Authority to Abandon Certain Personal Property [Docket No. 63] (the  
24 "Rejection Motion"). Notably, in the Rejection Motion, the Debtor expressly acknowledged that:

25                   Following the Petition Date, through the entry of the Order for  
26                   Relief ("Gap Period"), the Debtor continued to operate its business  
                    in accordance with § 303(f) of the Bankruptcy Code.

27          Rejection Motion, pg. 3, ¶ 3.

1 In addition, while the Debtor sought to abandon certain property located on other  
2 landlords' premises as part of the Rejection Motion, the Debtor expressly did not abandon any of  
3 its Personal Property located at the Premises. Rejection Motion, pgs. 4-5, ¶ 5. Consequently, this  
4 Court granted the Rejection Motion, but did not authorize the abandonment of the Personal  
5 Property.

6 **D. The TIC Gap Claim**

7 On or about October 11, 2011, TIC timely filed the TIC Claim in the Debtor's bankruptcy  
8 case asserting an aggregate prepetition, nonpriority unsecured claim in the amount of  
9 \$1,801,769.99. *See Exhibit "A"* attached hereto. In the TIC Claim, TIC asserted, among other  
10 claims, the following priority claim:

11 On or about June 6, 2011, the Bankruptcy Court entered an order for  
12 relief under chapter 11 of the Bankruptcy code in the above-  
captioned bankruptcy case. . . . From the Petition Date through  
13 June 6, 2011, the Debtor failed to pay \$321,604.41 in rent and other  
damages due under the Lease (the "Gap Claim"). [TIC's] Gap Claim  
14 is entitled to priority pursuant to section 507(a)(3) of the Bankruptcy  
Code.

15 TIC Claim, pg. 3.

16 **III. TIC'S RESPONSE TO THE COMMITTEE'S OBJECTION**

17 **A. The Committee's Objection Is Not Supported by Admissible Evidence**

18 Bankruptcy Rule 3001(f) states: "A proof of claim executed and filed in accordance with  
19 these rules shall constitute prima facie evidence of the validity and amount of the claim." Fed. R.  
20 Bankr. P. 3001(f). Therefore, a party objecting to a claim must overcome the prima facie validity  
21 of the proof of claim by producing "sufficient evidence to negate one or more of the sworn facts in  
22 the proof of claim. . . ." *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992); *In re*  
23 *King*, 305 B.R. 152, 162 (Bankr. S.D.N.Y. 2004). In other words, the objection must "show facts  
24 tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim  
25 themselves." *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039-40 (9th Cir. 2000);  
26 *Allegheny*, 954 F.2d at 173-74. A proof of claim, by itself, is "strong enough to carry over a mere  
27 formal objection without more." *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991).

28

1 Notwithstanding the Committee's burden with respect to the Objection, the Committee did  
2 not support its Objection with admissible evidence. For example, with respect to the Lease, the  
3 Committee states:

4 On information and belief, the Debtor surrendered the Premises on  
5 or about the Petition Date. Objection, pg. 3, ¶ 7 (emphasis added).

6 The Committee's alleged information and belief is not evidence. Moreover, the Committee's  
7 statement is demonstrably false. As noted above, during the entire gap period, the Debtor  
8 maintained possession of the Premises which were full of the Personal Property. Even after the  
9 Petition Date, the Debtor's Personal Property remained in the Premises until it was sold as part of  
10 the Sale Motion. Given the Committee's failure to support its Objection with admissible evidence,  
11 the Court should overrule the Committee's Objection.

12 **B. The TIC GAP Claim Is Entitled to Priority Under Sections 502(f) and**  
13 **507(a)(3) of the Code**

14 The period between the date an involuntary petition is filed and the date that a bankruptcy  
15 court enters an order for relief in an involuntary case is commonly referred to as the "gap period."  
16 Claims that arise during the gap period are commonly referred to as "gap claims." Sections 502(f)  
17 and 507(a)(3) of the Bankruptcy Code provide for the allowance and priority of gap claims.  
18 Section 502(f) states:

19 In an involuntary case, a claim arising in the ordinary course of the  
20 debtor's business or financial affairs after the commencement of the  
21 case but before the earlier of appointment of a trustee and the order  
22 for relief shall be determined as of the date such claim arises, and  
23 shall be allowed . . . the same as if such claim had arisen before the  
24 date of the filing of the petition.

25 11 U.S.C. § 502(f) (emphasis added).

26 Section 507(a) of the Bankruptcy Code affords gap claims priority in payment ahead of  
27 other unsecured claims. *See* 11 U.S.C. § 507(a)(3). Gap claims are given priority under  
28 section 507(a)(3) to encourage creditors to extend credit to a debtor against whom an involuntary  
petition is filed. *In re Manufacturer's Supply Co.*, 132 B.R. 127, 128 (Bankr. N.D. Ohio 1991)  
("Section 502(f) is intended to protect creditors who deal with an involuntary debtor during the

1 gap period, such as lessors, trade creditors and similar parties, consistent with section 303(f)'s  
2 specific authority allowing an involuntary debtor to conduct its business in an ordinary manner  
3 while its ultimate status is adjudicated.").

4 While the Bankruptcy Code does not define the term "arising in the ordinary course of the  
5 debtor's business or financial affairs" in section 502(f), courts interpreting section 502(f) have  
6 determined that rent that first comes due under a nonresidential real property lease during the gap  
7 period falls within the definition of a "gap claim" that is entitled to priority under sections 502(f)  
8 and 507(a)(3). *See, e.g., Joan Cook, Inc. v. Graham White Mfg. Co.*, 1993 Bankr. LEXIS 777  
9 (Bankr. S.D. Fla. May 14, 1993) (rent accrued during gap period is allowable under  
10 section 502(f)); *In re CSVA, Inc.*, 140 B.R. 116, 118 (Bankr. W.D.N.C. 1992) (postpetition rent  
11 entitled to priority under section 502(f)); and *In re New Valley Corp.*, 2000 U.S. Dist. LEXIS  
12 12663 (D.N.J. Aug. 31, 2000). As the court in *New Valley Corp.* stated:

13 Undeniably, [the landlord's] claim for unpaid rent is a "claim arising  
14 in the ordinary course of [the debtor's] business after the  
15 commencement of the case but before . . . the order for relief." *Id.*  
16 § 502(f). Indeed, rent payments fall within the common  
17 understanding of ordinary course obligations, and the rent payments  
in dispute fall within the period ("gap period") identified by  
section 502(f). Hence, the claim falls squarely within section 502(f)  
and, therefore, "shall be allowed."

18 *New Valley*, at 55 (emphasis added).

19 Notably, the Committee failed to cite to the foregoing authority (or any authority  
20 addressing rent due under a nonresidential real property lease) in its Objection and instead  
21 attempts to raise two technical objections to the characterization of the TIC Gap Claim as a  
22 priority claim under sections 502(f) and 507(a)(3) of the Code. As shown, below, however, both  
23 of the Committee's technical arguments fail.

#### 24 1. The TIC Gap Claim "Arose" During the Gap Period

25 Without citing to any authority addressing monthly rent obligations arising under an  
26 unexpired nonresidential real property lease during the gap period, the Committee generally  
27 argues that the TIC Gap Claim is not entitled to priority because the monthly rent due under the  
28 Lease allegedly "arose" outside of the gap period. Objection, pgs. 7-16. According to the

1 Committee, a claim for monthly rent under a nonresidential real property lease "arises" for  
2 purposes of section 502(f) of the Code when the underlying lease is first executed. Armed with  
3 this false conclusion, the Committee then argues that prepetition landlords are statutorily ineligible  
4 to assert priority claims under sections 502(f) and 507(a)(3) of the Code as a matter of law. The  
5 Committee's position is without merit for several reasons.

6 First, the Committee has ignored the authority identified in Section III (B) above that  
7 expressly allowed landlord claims for rent arising under a lease during the gap period as priority  
8 claims under sections 502(f) and 365(d)(3). The Committee's arguments directly contradict this  
9 authority.

10 Second, contrary to the Committee's unsupported argument, case law firmly establishes  
11 that monthly rent and other charges due under a nonresidential real property lease are deemed to  
12 "arise" in the month such charges first come due; not upon lease execution as argued by the  
13 Committee. *See, e.g., Upstairs Gallery v. Macklowe W. Dev. Co., L.P. (In re Upstairs Gallery)*,  
14 167 B.R. 915 (B.A.P. 9th Cir. 1994); *In re Pan Trading Corp.*, 125 Bankr. 869, 875 (Bankr.  
15 S.D.N.Y. 1991); *Child World v. Service Merchandise Co. (In re Child World)*, 173 B.R. 473, 477  
16 (Bankr. S.D.N.Y. 1994) ([I]t is well settled that the obligation to pay rent is deemed to arise on the  
17 due dates provided in the lease and not when the lease is signed."); *In re Clothes, Inc.*, 35 B.R.  
18 489, 491 (Bankr. D.N.D. 1983). As stated by the bankruptcy court in *Clothes, Inc.*:

19 Under § 365 of the Code, an unexpired lease on real property is  
20 treated as an executory contract which involves an exchange of  
21 rights and obligations throughout the term of the lease. As each  
22 month comes up, the lessee becomes obligated anew for that month's  
23 rent and in return, the lessor becomes obligated to provide the lessee  
24 with the leasehold for that month. Pre-code decisions have generally  
25 held that the payment of current rent is premised upon current  
26 consideration and did not constitute a preference.

27 *Clothes, Inc.*, 35 B.R. at 491 (emphasis added).

28 Similarly, the Ninth Circuit BAP in *Upstairs Gallery* quoted:

... [I]n the "garden variety" rent case, lease payment obligations  
arise when they become due and payable, and not when the lease is  
signed, rental payments have generally been treated differently than  
periodic payments on other types of longer term debt.

1 *Upstairs Gallery*, at 918 (quoting *In re Pan Trading Corp.*, 125 Bankr. 869, 875 (Bankr. S.D.N.Y.  
2 1991)). Indeed, the Ninth Circuit BAP further stated:

3 . . . lease payment obligations arise when they become due and  
4 payable because of the contemporaneous manner in which money  
5 and services are exchanged and the facile divisibility of the separate  
6 rent payments. As a rule, payments apply specifically to the period  
7 in which they are paid.

8 *Upstairs Gallery*, at 918 (emphasis added).

9 Contrary to the Committee's Objection, therefore, case law firmly establishes that monthly  
10 rental obligations "arise" under a unexpired nonresidential real property lease when payments are  
11 due on a monthly basis; not upon lease execution. Accordingly, the Committee's Objection, which  
12 entirely fails to address or analyze monthly rent obligations arising under an unexpired  
13 nonresidential real property lease, should be overruled.

14 Third, unlike regular creditors who have an option to do business with the debtor  
15 postpetition, a landlord (as a result of the automatic stay and the debtor's continued occupancy of  
16 the premises) is in effect forced to become an involuntary creditor of the estate. *Cukierman v.*  
17 *Uecker (In re Cukierman)*, 265 F.3d 846 (9th Cir. 2001) ("The landlord is forced to provide  
18 current services – the use of its property, utilities, security, and other services – without current  
19 payment. No other creditor is put in this position"); *see also In re Warehouse Club*, 184 B.R. 316,  
20 317 (Bankr. N.D. Ill. 1995). The Committee's argument would mean that not only are landlords  
21 forced to provide possession to an involuntary bankruptcy debtor, but they are also statutorily  
22 ineligible for any priority claim stemming from such postpetition possession.

23 Fourth, the Committee's construction of section 502(f) would also render section 365(d)(3)  
24 of the Code meaningless. Under section 365(d)(3) of the Code, a debtor is required to timely  
25 perform obligations "arising under any unexpired lease of nonresidential real property . . ."  
26 11 U.S.C. § 365(d)(3) (emphasis added). If the Committee's construction of the term "arising" is  
27 accepted for purposes of nonresidential real property leases, obligations under a lease would all be  
28 deemed to "arise" upon lease execution, and a debtor would have no obligation to perform under a  
nonresidential real property lease postpetition in accordance with section 365(d)(3) of the Code.  
Of course, the Ninth Circuit has firmly rejected such arguments. *Cukierman*, 265 F.3d at 851

1 (trustee must timely perform all postpetition obligations arising under nonresidential real property  
2 lease).

3 Fifth, the Committee's reliance on section 502(g) and the Ninth Circuit's ruling in  
4 *TreeSource Indus. v. Midway Engineered Wood Prods. (In re TreeSource Indus.)*, 363 F.3d 994,  
5 998 (9th Cir. 2004), to support its argument is entirely without merit. By its plain language,  
6 502(g) only applies to "a claim arising from the rejection . . ." of a lease. 11 U.S.C. § 502(g).  
7 Here, the gap period obligations under the Lease arose prior to the rejection of the Lease which  
8 did not occur until after the entry of the Order for Relief. Thus, section 502(g) does not, in any  
9 way, restrict TIC's gap period claim. Likewise, *TreeSource* does not even address 502(f) gap  
10 claims and actually undercuts the Committee's position by stating: "If the debtor ultimately  
11 rejects, then all claims arising from a debtor's nonperformance of a post-petition, pre-rejection  
12 lease obligation are entitled to administrative expense priority." *Id.* at 998. In using this language,  
13 the Ninth Circuit clearly recognized that monthly rent due postpetition "arises" in the month that it  
14 is due.<sup>3</sup> Moreover, the Ninth Circuit also firmly recognized that all postpetition rent is entitled to  
15 priority notwithstanding section 502(g).

16 Finally, the Committee has failed to support its position with any authority stating that  
17 monthly rent under a nonresidential real property lease arises for purposes of any provision of the  
18 Code upon lease execution. Instead, the only authority the Committee cites addressing leases at  
19 all are cases involving indemnity claims, not monthly rent accruing under a lease.

20 In sum, contrary to the Committee's position, monthly rent claims under a nonresidential  
21 real property lease "arise" when such payments are due under the lease, not when the lease is first  
22 executed. Therefore, the monthly rent and other charges that came due under the Lease following  
23 the Petition Date and prior to the entry of the Order for Relief are entitled to priority under  
24 sections 502(f) and 507(a)(3) of the Code because they arose during the gap period.

25 //

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27 <sup>3</sup> This approach is consistent with bankruptcy court decisions throughout the Ninth Circuit  
28 applying the so-called proration approach to postpetition stub rent. *In re Leather Factory, Inc.*, 475 B.R. 710 (Bankr. C.D. Cal. 2012); *see also In re Nat'l Refractories & Minerals Corp.*, 297 B.R. 614 (Bankr. N.D. Cal. 2003).

1           **C.     The TIC Gap Claim Was Incurred in the Ordinary Course**

2           As a secondary argument, the Committee argues, *without any supporting evidence*, that the  
3 TIC Gap Claim did not arise in the ordinary course of business of the Debtor because the Debtor  
4 allegedly elected to dissolve on March 16, 2011, one month prior to the Petition Date. TIC  
5 submits that the Committee's ordinary course argument is also without merit for the following  
6 reasons:

7           First, the Committee does not support its argument with admissible evidence and it should  
8 be rejected for that reason alone. Moreover, contrary to the Committee's position that the Debtor  
9 dissolved prepetition, the Debtor in the Rejection Motion admitted that it "continued to operate its  
10 business in accordance with section 303(f) . . . " during the gap period. Rejection Motion,  
11 pg. 3, ¶ 3.

12           Second, as set forth in the authority above, "rent payments fall within the common  
13 understanding of ordinary course obligations. . . ." *New Valley*, at 55.

14           Third, while the Bankruptcy Code does not define the term "ordinary course of business,"  
15 the phrase is used in several sections of the Code. For example, courts interpreting section 363 of  
16 the Code commonly use two tests to determine whether a transaction is in the ordinary course:  
17 (i) the horizontal dimensions test; and (ii) the vertical dimensions test. *In re Dant & Russell, Inc.*,  
18 853 F.2d 700, 704 (9th Cir. 1988). Under both tests, the monthly obligations of rent accruing  
19 under the Lease would constitute ordinary course payments.

20           The horizontal test compares whether the transaction at issue "is of the type that other  
21 similar business would engage in as ordinary business." *Id.* In effect, this test is aimed at  
22 determining whether the transaction is abnormal or unusual, in which case it is probably not in the  
23 ordinary course. Under the horizontal test, there is no question that a law firm similar to Howrey  
24 enters into many real property office leases. Indeed, the Committee readily concedes – as it must  
25 – that the Lease for the Premises was entered into in the ordinary course. Objection, pg. 18(17-19)  
26 ("The Committee does not dispute that the parties entered into the Lease in the ordinary course of  
27 business. . . "). Moreover, the Debtor's Schedule G illustrates that the Lease was ordinary course  
28 for the Debtor. In its Schedule G, the Debtor scheduled that it was a party to approximately

1 seventeen (17) office lease agreements, six (6) sublease agreements, and two (2) storage space  
2 agreements as of the Petition Date. *See* Schedule G [Docket No. 132, pgs. 136-163]. Clearly, the  
3 Debtor in the ordinary course entered into similar real property leases as the Lease. Given that the  
4 Lease was entered into in the ordinary course, it is axiomatic that the obligations arising  
5 thereunder arose in the ordinary course.

6         The vertical dimension test views a transaction from the perspective of creditors. This test  
7 measures the types of risks that creditors impliedly agreed to when they extended credit to the  
8 debtor and determines whether the transaction at issue is within the range of risks reasonably  
9 expected by creditors. Monthly payments due under the Lease also constitute ordinary course  
10 payments under the vertical dimension test. Clearly, hypothetical creditors doing business with  
11 the Debtor reasonably expected the Debtor to be a party to nonresidential real property leases.  
12 Indeed, next to the cost of labor, lease expenses are one of the major categories of expenses of a  
13 law firm. As a result, the Lease and the monthly obligations that arose thereunder qualify as  
14 ordinary course under the vertical test as well.

15         The Committee does not cite to any case authority which provides that obligations arising  
16 under a lease admittedly entered into in the ordinary course of business cease to qualify as  
17 ordinary course obligations where the debtor enters the zone of insolvency. Rather, the  
18 Committee cites to decisions where courts found that professional fees incurred following either  
19 the closing of a business or an involuntary petition filing do not qualify as ordinary course  
20 obligations. *See In re Penninsula Roofing & Sheet Metal, Inc.*, 9 B.R. 257, 261 (Bank. N.D. Mich.  
21 1981) (payments of professional fees incurred following closure of business not ordinary course);  
22 and *In re Baab Steel, Inc.*, 495 B.R. 530, 534 (Bankr. D. Colo. 2013) (professional fees incurred  
23 during gap period not ordinary course). The Committee also cites to *Hamilton v. Lumsden (In re*  
24 *Geothermal Resources Int'l)*, 93 F.3d 648, 650 (9th Cir. 1996), for the proposition that  
25 employment contracts *first entered into during the gap period are not ordinary course*. Here,  
26 however, the Lease was not entered into during the gap period. Quite to the contrary, the Lease  
27 was entered into by the Debtor well outside of the gap period in the ordinary course of the  
28

1 Debtor's business. As such, the obligations arising thereunder are quintessential ordinary course,  
2 and the Committee's Objection should be overruled.

3 **D. Joinder**

4 To the extent not inconsistent with the foregoing, TIC joins in any oppositions filed by  
5 landlords to the Committee's objections to: (i) Claim No. 956-2 [Docket No. 2291]; Claim No.  
6 690-1 [Docket No. 2293]; and Claim No. 570-3 [Docket No. 2295].

7 **IV. CONCLUSION**

8 For the foregoing reasons, TIC respectfully urges this Court to overrule the Committee's  
9 Objection.

10  
11 Dated: July 16, 2015

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